

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HELAL AHMED, PARVEZ ALI, MD. G. MIAH,
ENAMUL SHAKUR, CARLOS ORTIZ,
GRZEGORZ KOCIECKI, MAHBUBUL KARIM,
TANVIR SHAHID, ADRIAN DOMINGUEZ RESENDIZ,
CESAR ABAMBARI, HORACIO HERNANDEZ, JOSE
REYES, PATRICIO GONZALEZ, SHAIENDRA
SHRESTHA, AND ROHIT TALWAR, on behalf of
themselves and other similarly situated current and
former restaurant workers employed by defendants,

07 Civ. 3512 (JSR) (FM)

Plaintiffs,

**ANSWER TO FIRST
AMENDED COMPLAINT**

-against-

DEVI RESTAURANT, LTD., and
RAKESH AGGARWAL,

Defendants.

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Defendants, 8 East 18th Street Restaurant, LLC, s/h/a Devi Restaurant, Ltd.,
("Devi"), and Rakesh Aggarwal, by their attorneys Mitchell & Incantalupo, as and for their
answer to the First Amended Complaint of the Plaintiffs, upon information and belief,
allege and state that they:

PRELIMINARY STATEMENT

1. Deny the allegations set forth in paragraph "1" of the First Amended
Complaint, except admit that Plaintiffs purport to proceed against Defendants as set
forth therein.

2. Deny the allegations set forth in paragraph "2" of the First Amended
Complaint, except admit that Devi was owned and operated by defendant Aggarwal until
approximately August 27, 2007, when the restaurant closed.

3. Deny the allegations set forth in paragraph "3" of the First Amended
Complaint.

4. Deny the allegations set forth in paragraph "4" of the First Amended Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

JURISDICTION

5. Deny the allegations set forth in paragraph "5" of the First Amended Complaint, except admit that the jurisdiction of this Court is purportedly invoked as set forth therein.

6. Deny the allegations set forth in paragraph "6" of the First Amended Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

7. Deny the truth of the allegations set forth in paragraph "7" of the First Amended Complaint, except admit that the venue of this court is purportedly invoked as set forth therein, and that Devi was located in Manhattan.

PARTIES

8. Deny the allegations set forth in paragraph "8" of the First Amended Complaint, except admit that some of the Plaintiffs used to work as a busser, stocker, bartender or runner for Devi.

9. Deny the allegations set forth in paragraph "9" of the First Amended Complaint.

10. Deny that they possess knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "10" of the First Amended Complaint.

11. Deny the allegations set forth in paragraph "11" of the First Amended Complaint require a response and affirmatively assert that the meaning and construction of statutes are for the Court to determine.

12. Deny the allegations set forth in paragraph “12” of the First Amended Complaint, except admit that Devi had annual gross sales in excess of \$500,000.00. Defendants further affirmatively respond that Devi was a limited liability corporation formed and organized under the laws of the State of New York in 2002 under the name 8 East 18th Street Restaurant, LLC.

13. Admit the allegations set forth in paragraph “13” of the First Amended Complaint.

14. Deny the allegations set forth in paragraph “14” of the First Amended Complaint require a response and affirmatively assert that the meaning and construction of statutes are for the Court to determine.

STATEMENT OF FACTS

15. Deny the allegations set forth in paragraph “15” of the First Amended Complaint.

16. Deny the allegations set forth in paragraph “16” of the First Amended Complaint.

17. Deny the allegations set forth in paragraph “17” of the First Amended Complaint.

18. Deny the allegations set forth in paragraph “18” of the First Amended Complaint.

19. Admit the allegations set forth in paragraph “19” of the First Amended Complaint.

20. Deny the allegations set forth in paragraph “20” of the First Amended Complaint.

21. Deny the allegations set forth in paragraph “21” of the First Amended Complaint.

22. Deny the allegations set forth in paragraph "22" of the First Amended Complaint.

23. Deny the allegations set forth in paragraph "23" of the First Amended Complaint.

24. Deny the allegations set forth in paragraph "24" of the First Amended Complaint.

25. Deny the allegations set forth in paragraph "25" of the First Amended Complaint.

26. Deny the allegations set forth in paragraph "26" of the First Amended Complaint.

27. Deny the allegations set forth in paragraph "27" of the First Amended Complaint.

28. Deny the allegations set forth in paragraph "28" of the First Amended Complaint.

FIRST CAUSE OF ACTION

29. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "28" as if more fully set forth at length herein.

30. Deny the allegations set forth in paragraph "30" of the First Amended Complaint.

31. Deny the allegations set forth in paragraph "31" of the First Amended Complaint.

32. Deny the allegations set forth in paragraph "32" of the First Amended Complaint.

SECOND CAUSE OF ACTION

33. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "32" as if more fully set forth at length herein.

34. Deny the allegations set forth in paragraph "34" of the First Amended Complaint.

35. Deny the allegations set forth in paragraph "35" of the First Amended Complaint.

36. Deny the allegations set forth in paragraph "36" of the First Amended Complaint.

THIRD CAUSE OF ACTION

37. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "36" as if more fully set forth at length herein.

38. Deny the allegations set forth in paragraph "38" of the First Amended Complaint.

39. Deny the allegations set forth in paragraph "39" of the First Amended Complaint.

FOURTH CAUSE OF ACTION

40. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "39" as if more fully set forth at length herein.

41. Deny the allegations set forth in paragraph "41" of the First Amended Complaint.

42. Deny the allegations set forth in paragraph "42" of the First Amended Complaint.

43. Deny the allegations set forth in paragraph "43" of the First Amended Complaint.

44. Deny the allegations set forth in paragraph "44" of the First Amended Complaint.

FIFTH CAUSE OF ACTION

45. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "44" as if more fully set forth at length herein.

46. Deny the allegations set forth in paragraph "46" of the First Amended Complaint.

47. Deny the allegations set forth in paragraph "47" of the First Amended Complaint.

48. Deny the allegations set forth in paragraph "48" of the First Amended Complaint.

SIXTH CAUSE OF ACTION

49. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "48" as if more fully set forth at length herein.

50. Deny the allegations set forth in paragraph "50" of the First Amended Complaint.

51. Deny the allegations set forth in paragraph "51" of the First Amended Complaint.

52. Deny the allegations set forth in paragraph "52" of the First Amended Complaint.

SEVENTH CAUSE OF ACTION

53. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "52" as if more fully set forth at length herein.

54. Deny the allegations set forth in paragraph "54" of the First Amended Complaint.

55. Deny the allegations set forth in paragraph "55" of the First Amended Complaint.

56. Deny the allegations set forth in paragraph "56" of the First Amended Complaint.

EIGHTH CAUSE OF ACTION

57. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "56" as if more fully set forth at length herein.

58. Deny the allegations set forth in paragraph "58" of the First Amended Complaint.

59. Deny the allegations set forth in paragraph "59" of the First Amended Complaint.

60. Deny the allegations set forth in paragraph "60" of the First Amended Complaint.

NINTH CAUSE OF ACTION

61. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "60" as if more fully set forth at length herein.

62. Deny the allegations set forth in paragraph "62" of the First Amended Complaint.

63. Deny the allegations set forth in paragraph "63" of the First Amended Complaint.

TWELFTH CAUSE OF ACTION (RETALIATION)

64. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "63" as if more fully set forth at length herein.

65. Deny the allegations set forth in paragraph "65" of the First Amended Complaint.

66. Deny the allegations set forth in paragraph “66” of the First Amended Complaint.

67. Deny the allegations set forth in paragraph “67” of the First Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

68. The Complaint fails to state a claim, in whole or in part upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

69. Defendants had legitimate business reasons for taking any of the acts alleged by the plaintiffs to have been retaliatory.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

70. Plaintiffs have failed to mitigate their alleged damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

71. All or part of the claims asserted herein by Plaintiffs are barred by the applicable statute of limitations.

WHEREFORE, defendants request judgment dismissing the Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: September 7, 2007
Forest Hills, New York

MITCHELL & INCANTALUPO

By: _____ /S/
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